

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LARRY COLWELL**

## Claimant

VS.

## TONY'S PIZZA SERVICE

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

## Insurance Carrier

AND

# KANSAS WORKERS COMPENSATION FUND

)  
Docket No. 184,482 & 187,269

## ORDER

Both claimant and respondent requested review of the Award entered by Assistant Director Brad E. Avery dated February 23, 1996. The Appeals Board heard oral argument July 18, 1996.

## APPEARANCES

Claimant appeared by his attorney, Scott M. Price of Salina, Kansas. Respondent and its insurance carrier appeared by their attorney, John W. Mize of Salina, Kansas. The Workers Compensation Fund appeared by its attorney, David G. Shriver of McPherson, Kansas.

## RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

## ISSUES

Pursuant to the parties' agreement, the Assistant Director dismissed the proceeding in Docket No. 184,482. The parties erroneously requested review of that proceeding and erroneously included that docket number in their briefs. Therefore, the review in Docket No. 184,482 should be dismissed.

In Docket No. 187,269, the Assistant Director found that claimant was entitled to receive medical benefits only under K.S.A. 1990 Supp. 44-501(c). Claimant requests review of the issue of nature and extent of disability. Respondent and its insurance carrier request review of two issues: whether claimant made timely written claim and the liability of the Workers Compensation Fund.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds:

The Award entered by the Assistant Director should be reversed. The Appeals Board finds that claimant did not serve timely written claim upon the respondent as required by K.S.A. 44-520a and, therefore, he should be denied all benefits in this proceeding.

This proceeding, Docket No. 187,269, involves a claim for workers compensation benefits for an accident that occurred on June 29, 1991 when claimant allegedly injured his low back. Claimant immediately reported the accident to the respondent and began receiving medical treatment from the company physician. The last medical treatment claimant received for that accident was August 2, 1991. Claimant was released from medical treatment at that time. Claimant next received treatment for his back in the fall of 1993 after he allegedly aggravated his low back at that time while working for the respondent. The parties agreed that claimant served written claim on the respondent on March 4, 1994. Although claimant initially made a claim for workers compensation benefits in Docket No. 184,482 for a July 1993 work-related accident, the parties agreed to dismiss that proceeding.

K.S.A. 44-520a provides:

"(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident."

Under the facts presented, claimant has failed to establish that he served respondent with timely written claim. Claimant contends his time to serve written claim upon the respondent did not commence because respondent did not advise him it would no longer provide him with authorized medical treatment. Claimant cites Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973) to support his argument.

The Appeals Board disagrees with claimant's analysis and finds the Blake case to be distinguishable from the facts in this proceeding. In Blake the claimant was receiving ongoing medical treatment which the respondent, without notice to the claimant, quit paying. Thereafter, the respondent attempted to rely upon its refusal to pay those medical bills to start the running of the time to serve timely written claim. Under those facts, the Kansas Supreme Court held that a respondent could not effect a suspension of medical treatment and start a worker's time to serve written claim to run by merely failing to pay medical bills as they were received. The Court held that the respondent had a positive duty, under those facts, to advise an injured worker that it was discontinuing an authorized course of medical treatment before the time in the written claim statute began to run.

In the proceeding now before us, claimant's authorized course of treatment ended on August 2, 1991 because, apparently, he had received all the medical treatment indicated by the circumstances. Therefore, respondent did not "suspend" medical treatment as was the case in Blake. Based on these facts, under K.S.A. 44-520a, claimant had 200 days from the date of his last medical treatment, or August 2, 1991, to serve written claim upon the respondent. However, claimant failed to do so and, thus, his claim for benefits must be denied.

Claimant also contends his written claim is timely because it was served within 200 days of the medical treatment he received in the fall of 1993. The Appeals Board finds that argument to be without merit. A review of the entire record indicates that medical treatment was provided for a new injury or an aggravation of a preexisting condition which constituted a new accidental injury that was allegedly sustained in late summer or early fall of 1993. Therefore, the fall 1993 medical treatment did not extend the time to serve written claim for the June 1991 accident. Even if the medical treatment provided in the fall of 1993 had been administered to treat the natural and probable sequelae of the June 1991 accident rather than the injury sustained in a new accident, claimant's written claim would still be considered untimely because claimant's time to serve written claim expired before he received the 1993 treatment. It is well-settled that once that the time has expired, it is neither revived nor extended if benefits are later provided. See Rutledge v. Sandlin, 181 Kan. 369, 310 P.2d 950 (1957).

Based upon the above findings and conclusions, the remaining issues are rendered moot.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the review in Docket No. 184,482 should be, and hereby is, dismissed; that the Award dated February 23, 1996 entered by Assistant Director Brad E. Avery in Docket No. 187,269 should be, and hereby is, reversed; and that claimant's request for benefits is denied.

The remaining orders of the Assistant Director contained in the Award are hereby adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Scott M. Price, Salina, KS  
John W. Mize, Salina, KS  
David G. Shriver, McPherson, KS  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director